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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

JUL 28 2006

JEFF HATCH-MILLER, Chairman
 WILLIAM A. MUNDELL
 MARC SPITZER
 MIKE GLEASON
 KRISTIN K. MAYES

DOCKETED BY

NR

IN THE MATTER OF THE NOTICE OF INTENT
 BY AT&T, INC. PURSUANT TO A.A.C. R14-2-
 803 OR, ALTERNATIVELY, FOR A LIMITED
 WAIVER OF THE COMMISSION'S AFFILIATED
 INTEREST RULES.

DOCKET NO. T-02428A-06-0203
 T-03016A-06-0203
 T-03116A-06-0203
 T-03287A-06-0203
 T-03346A-06-0203

DECISION NO. 68865OPINION AND ORDER

DATE OF HEARING: July 6, 2006

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Teena Wolfe¹

ON ATTENDANCE: Marc Spitzer, Commissioner
 Mike Gleason, Commissioner
 Kristin K. Mayes, Commissioner

APPEARANCES: Michael M. Grant and Garry Hayes, GALLAGHER &
 KENNEDY, and Danny A. Hoek, Senior Counsel for
 AT&T, Inc., on behalf of AT&T, Inc.;

Chris Rossie, President, on behalf of the
 Communications Workers of America Local Union
 7019, Intervenor; and

Maureen A. Scott, Senior Staff Attorney, Legal
 Division, on behalf of the Utilities Division of the
 Arizona Corporation Commission.

BY THE COMMISSION:

On March 31, 2006, AT&T, Inc. ("AT&T") submitted a Notice of Intent to the Arizona
 Corporation Commission ("Commission") pursuant to A.A.C. R14-2-803 concerning the proposed
 merger of AT&T and BellSouth Corporation ("BellSouth"), and an application for a limited waiver of

¹ The hearing was conducted by Administrative Law Judge Teena Wolfe. Administrative Law Judge Jane Rodda assisted
 in preparation of the Recommended Opinion and Order.

1 the Commission's Affiliated Interests Rules, A.A.C. R14-2-801, *et seq.* ("Rules"), or alternatively, an
2 expedited review and approval of the proposed merger without a hearing ("Application").

3 On April 6, 2006, a letter from Commissioner Mayes to AT&T was filed in this docket,
4 requesting that the Application be given a full evidentiary hearing.

5 On April 11, 2006, a letter from AT&T to Commissioner Mayes was filed in this docket.

6 On April 24, 2006, the Commission's Utilities Division Staff ("Staff") filed a Request for
7 Procedural Order ("Request") requesting implementation of a proposed procedural schedule, and
8 requesting that the Commission suspend the timeframes contained in the Rules for the purpose of
9 holding a hearing on the Application.

10 By Procedural Order dated April 27, 2006, the Commission suspended the timeframe for
11 consideration of the Application, established deadlines for filing testimony, and set the matter for
12 hearing on July 27, 2006 at its Phoenix offices.

13 On April 27, 2006, AT&T filed a Response to Staff's Request in which AT&T continued to
14 assert that no hearing is required, but which also indicated that it and Staff had agreed to an expedited
15 hearing schedule, which called for a hearing on or around June 27, 2006.

16 On May 3, 2006, Staff filed a reply to AT&T's Response to Staff's Request. Staff requested
17 that the Hearing Division modify its April 27, 2006 Procedural Order to reflect the stipulated
18 schedule.

19 By Procedural Order dated May 4, 2006, the Hearing Division established a procedural
20 schedule with a hearing to commence on July 6, 2006.

21 On May 8, 2006, AT&T filed the direct testimonies of Rick L. Moore, on behalf of AT&T,
22 and James G. Harralson, on behalf of BellSouth.

23 On May 19, 2006, AT&T filed Affidavits of Publication indicating the Notice of the hearing
24 as mandated by the May 4, 2006 Procedural Order was published in *The Arizona Republic* on May
25 12, 2006.

26 On June 21, 2006, Staff filed the direct testimony of Armando Fimbres.

27 On June 29, 2006, AT&T filed the rebuttal testimony of Rick L. Moore.

28 On June 29, 2006, a letter from Commissioner Mayes to all parties was docketed.

1 On June 30, 2006, the Communication Workers of America Local 7019 ("CWA") filed a
2 request to intervene in this matter.

3 The Commission granted intervention to the CWA at the June 3, 2006 pre-hearing conference.

4 On July 6, 2006 the hearing in this matter convened before a duly authorized Administrative
5 Law Judge.

6 On July 7, 2006, AT&T filed Late-filed Exhibits A-4, A-5 and A-6, State Commission orders
7 approving the AT&T/BellSouth Merger as of July 7, 2006, Excerpts from Form S-4 on Executive
8 Compensation, and Report Materials Made Available to Investors and Analyst Community
9 Concerning Merger Efficiencies.

10 On July 13, 2006, AT&T filed confidential late-filed exhibit A-7, concerning Arizona
11 employment levels.

12 * * * * *

13 Having considered the entire record herein and being fully advised in the premises, the
14 Commission finds, concludes, and orders that:

15 **FINDINGS OF FACT**

16 1. In Decision No. 68269 (November 8, 2005), the Commission approved the merger of
17 SBC Communications Inc. and AT&T Corporation, subject to certain conditions. The merged entity
18 is known as AT&T.

19 2. AT&T is a Delaware corporation with its principal place of business in San Antonio,
20 Texas. AT&T is the holding company parent of three Class A Arizona subsidiaries and one non-
21 Class A Arizona subsidiary. SBC Long Distance, LLC dba SBC Long Distance/AT&T Long
22 Distance is a Class A utility. SNET America, Inc. dba SBC Long Distance East/AT&T Long
23 Distance East is not a Class A utility. Both are authorized to provide competitive, local exchange,
24 inter-exchange, competitive interLATA/ intraLATA and in-state toll services. The other two Class A
25 utilities are AT&T Communications of the Mountain States, Inc. and TCG Phoenix, and both are
26 authorized to provide competitive local exchange, intraLATA toll, inter-exchange and intraLATA
27 services in Arizona.

28 3. BellSouth is a Georgia corporation and is the holding company parent of BellSouth

1 Long Distance, Inc. ("BSLD"). BellSouth provides communication services in the nine southeastern
2 states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South
3 Carolina and Tennessee. BSLD was authorized to provide resold interexchange service in Arizona in
4 Decision No. 61689 (May 13, 1999). BSLD is a Class B utility.

5 4. BSLD resells the services of carriers that have facilities in Arizona. BSLD does not
6 have any employees or facilities in Arizona. BSLD's 2005 intrastate Arizona revenues were
7 \$176,636.

8 5. All of the AT&T and Bell South subsidiaries are corporations in good standing.

9 6. The Commission has not received any written comments or opinions concerning the
10 proposed merger. During the public comment portion of the hearing, one individual, a former
11 employee of AT&T, made public comment.

12 7. The proposed merger will combine two holding companies and will not result in any
13 change in ownership or control of AT&T's Arizona operating subsidiaries. AT&T will become the
14 corporate parent of BellSouth, which will result in an indirect change in the control of BSLD.

15 8. At the time of the merger, each share of common stock of BellSouth will be converted
16 into and become exchangeable for 1.325 common shares of AT&T. AT&T will issue approximately
17 2.4 billion new shares of common stock, which is approximately 38 percent of AT&T's outstanding
18 shares.

19 9. Staff states that in the months that have elapsed since the SBC/AT&T merger, the
20 general state of local exchange competition in Arizona has not changed significantly. Arizona is
21 experiencing robust population growth. Staff believes, however, that wireline or traditional local
22 exchange competition has slowed and the local exchange market has been in decline. Competitive
23 alternatives have impacted both main and additional line markets, with an even more significant
24 impact on the long distance market. Staff states that wireless competition has experienced enormous
25 growth, with the number of wireless phones approaching the number of wireline phones. According
26 to Staff, Voice over Internet Protocol ("VoIP"), Wireless Fidelity ("WiFi") and Worldwide
27 Interoperability of Microwave Access ("WiMAX") are current examples of technologies that impact
28 the local exchange and long distance markets.

1 10. Qwest Corporation (Qwest”) is the dominant incumbent local exchange carrier
2 (“ILEC”) in Arizona. Staff states that the number of competitive local exchange carriers (“CLECs”)
3 competing in the Arizona local exchange market has not changed measurably since the SBC/AT&T
4 merger. The key CLECs remain to be AT&T, Arizona DialTone, Cox, MCI, McLeodUSA and
5 Eschelon. BellSouth is not certificated to provide local exchange service within Arizona and thus has
6 no CLEC presence.

7 11. AT&T is one the largest CLEC providers of business services in Arizona. AT&T’s
8 current focus is on the business market and its withdrawal from UNE-P based residential services has
9 continued.

10 12. BellSouth is one of the seven Regional Bell Operating Companies (“RBOCs”)
11 divested from AT&T in 1984, but to date has not sought major acquisitions as a path to corporate
12 growth. BellSouth, in partnership with SBC (now AT&T), invested in Cingular Wireless, a major
13 national wireless carrier. BellSouth has minimal presence in the long distance market in Arizona and
14 no presence in local exchange services in Arizona.

15 13. In response to Commissioner Mayes’ June 29, 2006 letter to the docket, AT&T states
16 that there are no Arizona layoffs planned or likely to occur as a result of the merger. Further, AT&T
17 states that it has no plans for layoffs or forced reductions that are not merger-related, but AT&T notes
18 that the likelihood of future force reductions will depend on AT&T’s ability to retain its current
19 customers.

20 14. Staff states there is little overlap between the operations of AT&T and BellSouth in
21 Arizona, and thus Staff believes the impact of the proposed merger on competition in Arizona is
22 minimal.

23 15. AT&T has agreed to comply with the conditions ordered by the Commission in
24 Decision No. 68269. In a letter filed in Docket No. T-03346A-05-0149, on March 29, 2006, AT&T
25 expressed its willingness to support the conditions within Decision No. 68269. Rick Moore, in his
26 direct testimony in this proceeding, states that “AT&T will continue to comply with the notice,
27 reporting and residential arbitration provisions of the Decision.” (Ex A-2, p 4.)

28 16. The Arizona Legislature passed, and the governor approved on May 31, 2006, Senate

1 Bill 1486, which amended A.R.S. § 40-243 to permit the Commission to administer arbitration
2 procedures to resolve complaints or disputes against telecommunications companies, except that
3 wireless providers and their customers must consent in writing to such arbitration procedures.

4 17. By its testimony in this proceeding AT&T consents to the arbitration program, and
5 would forego a need to provide additional written consent. (Tr 121-122.)

6 18. AT&T and BellSouth identify the benefits of the proposed merger on Arizona
7 consumers to include the extension of the residential arbitration program approved in Decision No.
8 68269 to Cingular Wireless; the creation of a stronger competitor which would be in a better position
9 to improve efficiency and reliability and reduce costs; and that the broader and more diverse
10 customer base resulting from the merger would support deployment of innovations of AT&T labs.

11 19. Staff concurs that a major benefit of the merger would be the extension of the
12 residential arbitration program to Cingular. Staff believes that the other touted benefits such as
13 higher reliability, reduced costs, faster and more economical introduction of new services and
14 features, synergies, improvements in efficiency, technological advances, and stronger competition are
15 more difficult to measure and more uncertain. Staff does agree, however, that because BellSouth has
16 such a small presence in Arizona, the effect of the merger on existing employees should be minimal.

17 20. In early 2006, AT&T informed Staff of a Directory Assistance overcharge situation
18 with AT&T business customers that occurred between March 2002 and August 2005. AT&T
19 informed Staff that AT&T business customers received an increase in Directory Assistance charges
20 coincident with an authorized Directory Assistance rate increase for TCG customers. The increase
21 for AT&T was not authorized. AT&T restored the Directory Assistance rate for AT&T business
22 customers, but to date, no solution for refunding the overcharge has been reached. Staff recommends
23 that this issue be addressed in this proceeding.

24 21. Staff recommends that the AT&T and BellSouth merger be approved with the
25 following conditions:

26 (a) That for one year following the merger close, or until AT&T and BellSouth inform
27 the Commission by filing an affidavit with Docket Control as a compliance item in this docket that
28 merger-related activities are completed, whichever comes last, AT&T and BellSouth shall provide

1 written notification to the Director of the Utilities Division and to the individual members of the
2 Commission 60 days prior to any planned merger-related Arizona workforce layoffs; any planned
3 merger-related Arizona plant closings; and any planned merger-related Arizona facility closings.

4 (b) That if the newly merged company, or any of its regulated affiliates, chooses to
5 conduct layoffs or facility closings in Arizona that are attributable to the merger, it shall file a report
6 within two months of the effective date of the layoffs or closings with the Commission stating why it
7 was necessary to do so and what efforts the Company made or is making to re-deploy those
8 individuals elsewhere in the Company. This report shall also state whether any savings associated
9 with facility closings have been re-invested in the Company's Arizona operations, and if not, why.
10 This report shall be filed for one year following merger close or until AT&T and Bell South inform
11 the Commission by filing an affidavit with Docket Control that merger-related activities are
12 completed, whichever comes last.

13 (c) That the newly merged company, and any of its regulated affiliates, shall continue
14 to comply with conditions ordered in Decision No. 68269 pertaining to the SBC merger with AT&T;
15 and

16 (d) That AT&T be required to file, for Commission approval, a plan for refunding the
17 Directory Assistance overcharges to AT&T business customers within 30 days of a Commission
18 Order in this matter.

19 22. AT&T has agreed to the inclusion of the provision in Decision No. 68269 that for a
20 period of one year following the merger close, the merged entity will provide written notification 60
21 days prior to any planned merger-related Arizona workforce layoffs; any planned merger-related
22 Arizona plant closings; and any planned merger-related Arizona facility closings. However, AT&T
23 opposes extending the requirement to report on layoffs or forced reductions for reasons that are not
24 merger-related. AT&T states that expanding the obligation would burden management and hinder its
25 ability to adapt to the marketplace. (Tr at 67-68 and 91-92.)

26 23. As we stated in Decision No. 68269, we do not find the notice provision concerning
27 merger-related layoffs or forced reductions to be burdensome or onerous. The condition is for a
28 limited timeframe and is tailored to meet important public interest objectives of evaluating the effects

1 of the merger and whether such merger is in the public interest. Much of the discussion in this case
2 surrounded a determination of whether any particular workforce reduction is merger-related, and thus
3 subject to the reporting requirements. This question arose, because shortly after our approval of the
4 SBC/AT&T merger, AT&T laid off a number of employees in its Mesa facility and did not report this
5 reduction in writing pursuant to the requirements of Decision No. 68269 because AT&T did not view
6 this reduction as "merger-related." It is not our intent to interfere in the Company's ability to manage
7 its operations. We will require that all post-Merger layoffs be subject to this reporting requirement.

8 24. As we recognized in Decision No. 68269, information concerning layoff and/or plant
9 closings is potentially sensitive, and thus in lieu of requiring the information to be publicly docketed,
10 we will require the Companies to instead provide the information directly in writing to the Director of
11 the Utilities Division and to each Commissioner.

12 25. Decision No. 68269 included the requirement that the newly merged company in that
13 case submit annually a Consumer Benefits Report to the Commission's Utility Compliance Section.
14 The first report is due no later than December 31, 2006, and thereafter annually for a period of four
15 years, and should detail any cost savings that have resulted from the merger and have been passed on
16 to consumers; the Company's efforts to provide stand-alone DSL to the consumers of Arizona; how
17 AT&T Labs has benefited Arizona consumers; the Company's efforts to expand its VoIP offering to
18 Arizona consumers; and any rate reductions or increases that have been implemented by the
19 Company.

20 26. At the hearing Staff and AT&T agreed that in this proceeding, the newly merged
21 company shall include the effects of the BellSouth merger in the Consumer Benefits Report required
22 by Decision No. 68269. (Tr at 84.)

23 27. With respect to the Directory Overcharge situation, on July 5, 2006, AT&T filed with
24 the Commission an Application for approval of a refund plan. (Tr at 99-100.) (See Docket No. T-
25 02428A-06-0443.) AT&T proposes to refund the entire amount of the overcharges to affected
26 business customers of AT&T, who were customers between February and May 2006, based on their
27 average usage of Directory Assistance during that period. AT&T does not have records to know
28 which business customers made Directory Assistance calls between March 2002 and August 2005.

(Tr at 141.) The resolution of the refund mechanism will be addressed in Docket No. T-02428A-06-0443.

28. With the conditions we approve herein, we find the Application to be in the public interest.

CONCLUSIONS OF LAW

1. AT&T and BellSouth are public service corporations within the meaning of Article 15, Section 3 of the Arizona Constitution and Title 40 of the Arizona Revised Statutes.

2. The Commission has jurisdiction over the transaction proposed in the Application pursuant to Article 15, Section 3 of the Arizona Constitution and the Commission's Affiliated Interest Rules, A.A.C. R14-2-801 through 806.

3. It is in the public interest to approve the transaction proposed in the Application subject to the conditions recommended by Staff and adopted herein.

4. The Commission's regulatory authority over the AT&T and BellSouth subsidiaries will not change as a result of the merger.

5. The merger will not affect the rates, terms or conditions of service of the Arizona operating subsidiaries.

6. The merger will not impair the financial status of the parties, will not impair their ability to attract capital at fair and reasonable terms, and will not impair the ability of the Arizona operating subsidiaries to provide safe, reasonable and adequate service.

ORDER

IT IS THEREFORE ORDERED that the Notice of Intent Pursuant to A.A.C. R14-2-803.A filed by AT&T, Inc, is hereby approved, subject to the conditions set forth herein.

IT IS FURTHER ORDERED that for one year following the merger close, or until AT&T, Inc. and BellSouth Corporation inform the Commission by filing an affidavit with Docket Control, as a compliance item in this docket, that merger-related activities are completed, whichever comes last, AT&T, Inc. and BellSouth Corporation shall provide written notification to the Director of the Utilities Division and to the individual members of the Commission 60 days prior to any planned merger-related Arizona workforce layoffs; any planned merger-related Arizona plant closings; and

1 any planned merger-related Arizona facility closings.

2 IT IS FURTHER ORDERED that if the newly merged company, or any of its regulated
3 affiliates, chooses to conduct layoffs or facility closings in Arizona, it shall file a report within two
4 months of the effective date of the layoffs or closings with the Commission stating why it was
5 necessary to do so and what efforts the Company made or is making to re-deploy those individuals
6 elsewhere in the Company. This report shall also state whether any savings associated with facility
7 closings have been re-invested in the Company's Arizona operations, and if not, why. This report
8 shall be filed for one year following merger close or until AT&T, Inc. and BellSouth Corporation
9 inform the Commission by filing an affidavit with Docket Control that merger-related activities are
10 completed, whichever comes last.

11 IT IS FURTHER ORDERED that the newly merged company, and any of its regulated
12 affiliates, shall continue to comply with conditions ordered in Decision No. 68269 pertaining to the
13 SBC merger with AT&T, Inc.

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IT IS FURTHER ORDERED that the newly merged company shall include the effects of the BellSouth merger in the Consumer Benefits Report required by Decision No. 68269. Consistent with Decision No. 68269, the first report is due no later than December 31, 2006, and thereafter annually for a period of four years.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

Jeffrey Hatch-Pheller
CHAIRMAN

William Miller

COMMISSIONER

Commissioner Spitzer resigned
effective 7-21-2006

COMMISSIONER

Samuel M. ...
COMMISSIONER

R. M. ...

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 28th day of July, 2006.

Brian C. McNeil
BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

TW:mj

1 SERVICE LIST FOR:

AT&T, INC./BELLSOUTH

2 DOCKET NO.:

T-02428A-06-0203, T-03016A-06-0203, T-03116A-06-0203, T-03287A-06-0203 and T-03346A-06-0203

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